

## Department of Homeland Security

## § 208.24

after it has been used by the beneficiary for admission to the United States as a derivative of an asylee.

(d) *Spouse or child outside the United States.* When a spouse or child of an alien granted asylum is outside the United States, the asylee may request accompanying or following-to-join benefits for his or her spouse or child(ren) by filing a separate Request for Refugee/Asylee Relative for each qualifying family member in accordance with the form instructions. A separate Request for Refugee/Asylee Relative for each qualifying family member must be filed within two years of the date in which the asylee was granted asylum, unless USCIS determines that the filing period should be extended for humanitarian reasons. When the Request for Refugee/Asylee Relative is approved, USCIS will notify the asylee of such approval. USCIS also will send the approved request to the Department of State for transmission to the U.S. Embassy or Consulate having jurisdiction over the area in which the asylee's spouse or child is located. The approval of the Request for Refugee/Asylee Relative will remain valid for the duration of the relationship to the asylee and, in the case of a child, while the child is under 21 years of age and unmarried, provided also that the principal's status has not been revoked. However, the approved Request for Refugee/Asylee Relative will cease to confer immigration benefits after it has been used by the beneficiary for admission to the United States as a derivative of an asylee.

(e) *Denial.* If the spouse or child is found to be ineligible for the status accorded under section 208(c) of the Act, a written notice stating the basis for denial shall be forwarded to the principal alien. No appeal shall lie from this decision.

(f) *Burden of proof.* To establish the claimed relationship of spouse or child as defined in sections 101(a)(35) and 101(b)(1) of the Act, evidence must be submitted with the request as set forth in part 204 of this chapter. Where possible this will consist of the documents specified in § 204.2 (a)(1)(i)(B), (a)(1)(iii)(B), (a)(2), (d)(2), and (d)(5) of this chapter. The burden of proof is on the principal alien to establish by a

preponderance of the evidence that any person on whose behalf he or she is making a request under this section is an eligible spouse or child.

(g) *Duration.* The spouse or child qualifying under section 208(c) of the Act shall be granted asylum for an indefinite period unless the principal's status is revoked.

[62 FR 10337, Mar. 6, 1997, as amended at 63 FR 3796, Jan. 27, 1998. Redesignated at 64 FR 8490, Feb. 19, 1999 and further redesignated and amended at 65 FR 76136, Dec. 6, 2000; 76 FR 53784, Aug. 29, 2011; 76 FR 73476, Nov. 29, 2011]

### § 208.22 Effect on exclusion, deportation, and removal proceedings.

An alien who has been granted asylum may not be deported or removed unless his or her asylum status is terminated pursuant to § 208.24. An alien in exclusion, deportation, or removal proceedings who is granted withholding of removal or deportation, or deferral of removal, may not be deported or removed to the country to which his or her deportation or removal is ordered withheld or deferred unless the withholding order is terminated pursuant to § 208.24 or deferral is terminated pursuant to § 208.17(d) or (e).

[64 FR 8492, Feb. 19, 1999. Revised at 65 FR 76136, Dec. 6, 2000]

### § 208.23 Restoration of status.

An alien who was maintaining his or her nonimmigrant status at the time of filing an asylum application and has such application denied may continue in or be restored to that status, if it has not expired.

[62 FR 10337, Mar. 6, 1997. Redesignated at 64 FR 8490, Feb. 19, 1999 and further redesignated at 65 FR 76136, Dec. 6, 2000]

### § 208.24 Termination of asylum or withholding of removal or deportation.

(1) There is a showing of fraud in the alien's application such that he or she was not eligible for asylum at the time it was granted;

(2) As to applications filed on or after April 1, 1997, one or more of the conditions described in section 208(c)(2) of the Act exist; or

(3) As to applications filed before April 1, 1997, the alien no longer has a

well-founded fear of persecution upon return due to a change of country conditions in the alien's country of nationality or habitual residence or the alien has committed any act that would have been grounds for denial of asylum under § 208.13(c)(2).

(1) The alien is no longer entitled to withholding of deportation or removal because, owing to a fundamental change in circumstances relating to the original claim, the alien's life or freedom no longer would be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion in the country from which deportation or removal was withheld.

(2) There is a showing of fraud in the alien's application such that the alien was not eligible for withholding of removal at the time it was granted;

(3) The alien has committed any other act that would have been grounds for denial of withholding of removal under section 241(b)(3)(B) of the Act had it occurred prior to the grant of withholding of removal; or

(4) For applications filed in proceedings commenced before April 1, 1997, the alien has committed any act that would have been grounds for denial of withholding of deportation under section 243(h)(2) of the Act.

(c) *Procedure.* Prior to the termination of a grant of asylum or withholding of deportation or removal, the alien shall be given notice of intent to terminate, with the reasons therefor, at least 30 days prior to the interview specified in paragraph (a) of this section before an asylum officer. The alien shall be provided the opportunity to present evidence showing that he or she is still eligible for asylum or withholding of deportation or removal. If the asylum officer determines that the alien is no longer eligible for asylum or withholding of deportation or removal, the alien shall be given written notice that asylum status or withholding of deportation or removal and any employment authorization issued pursuant thereto, are terminated.

(d) *Termination of derivative status.* The termination of asylum status for a person who was the principal applicant shall result in termination of the asylum status of a spouse or child whose

status was based on the asylum application of the principal. Such termination shall not preclude the spouse or child of such alien from separately asserting an asylum or withholding of deportation or removal claim.

(e) *Removal proceedings.* When an alien's asylum status or withholding of removal or deportation is terminated under this section, the Service shall initiate removal proceedings, as appropriate, if the alien is not already in exclusion, deportation, or removal proceedings. Removal proceedings may take place in conjunction with a termination hearing scheduled under § 208.24(f).

(f) *Termination of asylum, or withholding of deportation or removal, by an immigration judge or the Board of Immigration Appeals.* An immigration judge or the Board of Immigration Appeals may reopen a case pursuant to 8 CFR 1003.2 and 8 CFR 1003.23 for the purpose of terminating a grant of asylum, or a withholding of deportation or removal. In such a reopened proceeding, USCIS must establish, by a preponderance of evidence, one or more of the grounds set forth in paragraphs (a) or (b) of this section. In addition, an immigration judge may terminate a grant of asylum, or a withholding of deportation or removal, made under the jurisdiction of USCIS at any time after the alien has been provided a notice of intent to terminate by USCIS. Any termination under this paragraph may occur in conjunction with an exclusion, deportation, or removal proceeding.

(g) *Termination of asylum for arriving aliens.* If the Service determines that an applicant for admission who had previously been granted asylum in the United States falls within conditions set forth in § 208.24 and is inadmissible, the Service shall issue a notice of intent to terminate asylum and initiate removal proceedings under section 240 of the Act. The alien shall present his or her response to the intent to terminate during proceedings before the immigration judge.

[62 FR 10337, Mar. 6, 1997. Redesignated at 64 FR 8490, Feb. 19, 1999 and further redesignated and amended at 65 FR 76136, Dec. 6, 2000; 76 FR 53785, Aug. 29, 2011]